

Message Text

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PASS EB FOR R. SMITH, L FOR FELDMAN, TREASURY FOR LANGE

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TAGS: EINV, OECD

SUBJECT: COMMITTEE ON INTERNATIONAL INVESTMENT AND
MULTINATIONAL ENTERPRISES (CIME) -- INTERVENTION BY
DEPUTY LEGAL ADVISOR

1. MISSION HAS RECEIVED FOLLOWING DOCUMENT FROM OECD
LEGAL SERVICE (STEIN), WHICH REFLECTS VIEWS OF OECD
LEGAL SERVICE ON PARAGRAPH 3 OF MNE GUIDELINES--ASSOCIAT-
ED CONSULTATIONS.

BEGIN TEXT

ANNEX TO THE
MINUTES OF THE IME COMMITTEE MEETING
OF 29TH AND 30TH APRIL, 1976

INTERVENTION BY THE DEPUTY LEGAL ADVISOR

THE DEPUTY LEGAL ADVISOR STATED THAT IT APPEARED TO
HIM FROM THE DISCUSSION AT THIS MEETING, AS WELL AS THAT
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WHICH HAD TAKEN PLACE AT THE LAST MEETING, THAT IT WAS

THE UNDERSTANDING OF THE COMMITTEE THAT TWO DECISIONS WERE ENVISAGED IN THE FIRST ALTERNATIVE TEXT, I.E., AN INITIAL DECISION ON WHETHER TO REVIEW SPECIFIC ISSUES AND A SECOND WHEN THE COMMITTEE CONSIDERED THE DESIRABILITY OF GIVING ENTERPRISES AN OPPORTUNITY TO EXPRESS THEIR VIEWS.

IN RESPECT OF THE FIRST DECISION, HE RECALLED THAT AT THE LAST MEETING OF THE COMMITTEE HE HAD POINTED OUT THAT THIS DECISION COULD HAVE THE STATUS OF A PROPOSAL FOR AN AGENDA ITEM, IN WHICH CASE INCLUSION OF THE MATTER IN THE AGENDA WOULD REQUIRE ITS ADOPTION BY A SIMPLE MAJORITY OF MEMBERS REPRESENTED ON THE COMMITTEE AND PRESENT, (RULES OF PROCEDURE OF THE ORGANISATION, RULE 14(A)). ON THE OTHER HAND, IT COULD BE A DECISION IN THE USUAL SENSE OF THE RULES OF PROCEDURE AND WOULD THEN REQUIRE MUTUAL AGREEMENT (I.E. UNANIMITY) BY ALL THE MEMBERS (OECD CONVENTION, ARTICLE 6(1)).

THE REACTION OF THE COMMITTEE AT THE LAST MEETING WAS THAT THIS DECISION WAS NOT TO BE THOUGHT OF AS MERELY AN AGENDA ITEM; CONSEQUENTLY, THE DEPUTY LEGAL ADVISOR HAD STATED THAT THE DECISION WOULD REQUIRE UNANIMITY. AS TONIGHT'S DISCUSSION SEEMED TO BE IN A SIMILAR VEIN HE CONFIRMED THAT MUTUAL AGREEMENT WOULD, INDEED, BE NECESSARY UNDER THE PRESENT WORDING IN ORDER THAT THE COMMITTEE DECIDE TO REVIEW SPECIFIC ISSUES OF PARTICULAR CONCERN TO SPECIFIC ENTERPRISES.

THE SUGGESTION THAT THE PHRASE "AT THE REQUEST OF A MEMBER COUNTRY" BE INCLUDED IN A SLIGHTLY REVISED TEXT OF THIS PROVISION MIGHT IMPLY, ON THE OTHER HAND, THAT THE INTENT WAS THAT THIS DECISION BE SIMPLY A REQUEST FOR INCLUSION OF AN ITEM IN THE AGENDA.

AS CONCERNS THE SECOND DECISION REQUIRED UNDER THIS PROVISION, I.E. THE COMMITTEE'S CONSIDERING THE DESIRABILITY OF GIVING TO ENTERPRISES AN OPPORTUNITY TO EXPRESS THEIR VIEWS, THIS WOULD ALSO REQUIRE THE MUTUAL AGREEMENT OF ALL MEMBERS.

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IF THE COMMITTEE WISHED TO CHANGE THE FORMAL VOTING REQUIREMENT FOR ONE OR THE OTHER OF THE DECISIONS UNDER DISCUSSION IT WOULD HAVE TO MODIFY THE TEXT IN A SUITABLE MANNER; IF, AS APPEARED TO BE THE CASE AT THIS STAGE OF THE DISCUSSION, BOTH DECISIONS WERE TO REMAIN SUBJECT TO UNANIMOUS AGREEMENT THE PRESENT TEXT WOULD SERVE THAT PURPOSE.

END TEXT
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